

When recorded, return to:

City of Tempe
31 East Fifth Street
Tempe, Arizona 85281
Attention: City Clerk

DEVELOPMENT AGREEMENT

[c2013-_____]

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made as of the _____ day of February, 2013 (the “Effective Date”), by and between the **CITY OF TEMPE**, an Arizona municipal corporation (“**City**”), and **HONEYWELL INTERNATIONAL, INCORPORATED**, a Delaware Corporation (“**Honeywell**”).

RECITALS

A. Section 9-500.05 of the Arizona Revised Statutes, as amended, authorizes the City to enter into a development agreement with a landowner or any other person having an interest in real property located in the City of Tempe.

B. Honeywell owns approximately 68 acres of real property located at the northeast corner of Warner Road and Priest Drive in Tempe, which property is legally described in ***Exhibit "A"*** (the “**Site**”).

C. The Site is improved with approximately 423,000 square-feet of industrial/light-manufacturing space, 267,000 square-feet of office space, 6,600 square-feet of warehouse space and 10,800 square-feet of restaurant space.

D. Honeywell intends to apply to the U.S. Foreign-Trade Zones Board seeking designation of the Site as a foreign-trade zone following the procedures and restrictions set forth in Title 15, Part 400 of the Code of Federal Regulations.

E. City and Honeywell acknowledge that this Agreement is a development agreement pursuant to the provisions of A.R.S. §9-500.05.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto state, confirm and agree as follows:

AGREEMENT

1. Definitions. In addition to words and terms defined elsewhere in this Agreement, as used herein, the following terms shall have the meanings set forth below, except where the context clearly indicates otherwise:

1.1 "City" means the City of Tempe, Arizona, an Arizona municipal corporation, and any successor public body or entity.

1.2 "FTZ" or "Foreign Trade Zone" means a Foreign-Trade Zone established with respect to the Site by the Foreign-Trade Zone Boards pursuant to an application submitted by Honeywell in accordance with this Agreement.

1.3 "Honeywell" means Honeywell International, Incorporated and any permitted successor-in-interest or assignee of Honeywell.

2. Duration of Agreement; Termination.

2.1 Incorporation of Recitals. The Recitals are true and correct and are incorporated herein by reference.

2.2 Duration of Development Agreement. The term of this Agreement shall commence on the Effective Date and unless sooner terminated as provided herein, shall continue until the date FTZ is deactivated.

3. Establishment and Operation of FTZ.

3.1 FTZ Application. Prior to the first anniversary of the Effective Date, Honeywell shall, at its sole cost and expense, submit an application for establishment of an FTZ covering a usage-driven site to be operated by Honeywell at the Site. Subject to Honeywell's compliance with the further provisions of this Agreement, City agrees to support Honeywell's FTZ application.

3.2 Restriction on Reclassification of Property within FTZ. Section 42-12006.2 of the Arizona Revised Statutes, as amended (the "Reclassification Statute"), provides that real and personal property located within the area of a foreign trade zone or subzone are to be classified as Class 6 property for purposes of taxation. But for this Agreement, all real and personal property within the FTZ would be entitled to reclassification as Class 6 property, which would lower its assessed valuation thereby lowering ad valorem taxes applicable to the Site. City would not have agreed to support Honeywell's FTZ application in the absence of Honeywell's agreement (hereafter stated) not to seek such reclassification as to any existing real property at the Site. Therefore, Honeywell agrees that it shall not (a) seek to reclassify pursuant to the Reclassification Statute, or otherwise, any real property included within the Site as of the date the FTZ is established (the "Determination Date"), or (b) otherwise alter the Site or seek to reclassify any real property included within the Site at any time after January 1, 2013 but prior to the Determination Date (the "Reclassification Restrictions"). City agrees that Honeywell may seek and obtain reclassification of real property added to the Site after the Determination Date,

whether pursuant to the Reclassification Statute or otherwise, and may seek to reclassify any personal property located at or within the Site at any time.

3.3 Compliance with Reclassification Restriction; Consequence of Failure to Comply. Honeywell's compliance with the Reclassification Restrictions set forth in Section 3.2 shall be evidenced by completion of the following steps:

3.3.1 Coordination with County Assessor. Reclassification is part of a self-reporting process embodied within Arizona law, including rules and procedures established by the Maricopa County Assessor to facilitate the collection of property taxes levied under Title Chapter 11 of Title 42 of the Arizona Revised Statutes, as amended, and requires that the property owner notify the Assessor that a reclassification is to be made. Honeywell shall take such affirmative actions as are necessary, and shall coordinate with the Maricopa County Assessor's Office, to ensure that the Assessor's records are properly notated to reflect the Reclassification Restrictions.

3.3.2 Agreements with City of Phoenix. The FTZ would be located within Phoenix Foreign-Trade Zone No. 75. Prior to submission of its FTZ application, Honeywell shall enter into an "operations agreement" with the City of Phoenix, pursuant to which Honeywell will operate the FTZ. The operations agreement shall (a) be cross-defaulted with this Agreement, such that a default under one shall also constitute a default under the other; (b) require Honeywell to comply with the reclassification restrictions set forth herein; and (c) require that Honeywell pay all costs, expenses and fees associated with the FTZ application. Further, City shall enter a memorandum of understanding or intergovernmental agreement with the City of Phoenix to memorialize their agreements with regard to operation of the Honeywell FTZ.

3.3.3 City Standing. Honeywell acknowledges that breach of the Reclassification Restrictions will be detrimental to the public interest and that City would be a party "directly affected" (as that term is used in 15 CFR Part 400) by such adverse impact. If Honeywell fails to comply with the Reclassification Restrictions, Honeywell will not object to City's standing before the Foreign-Trade Zones Board or any other administrative body or court, if City seeks to show Honeywell's use of the foreign-trade zone designation is not in the public interest and, as a consequence thereof, seeks to terminate the FTZ designation granted to Honeywell.

3.3.3 Payment to City. If Honeywell breaches the Reclassification Restrictions, then within thirty (30) days after written notice from City, and on each anniversary of such date until the FTZ is deactivated, Honeywell shall pay to City an amount equal to 100% of that portion of the ad valorem real property taxes assessed against the Site for the last year prior to such breach. Any amount not paid when due shall bear interest at the rate of 15% per annum (compounded daily) from the date due until paid in full.

3.4 City Manager's Power to Consent. The City authorizes and empowers the City Manager to consent to any and all requests of the Developer requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City

Council approval as a matter of law, including, without limitation, any amendment or modification of this Agreement. The City Manager is further authorized to execute the memorandum of understanding with the City of Phoenix referenced in Section 3.3.

4. Default; Remedies.

4.1 Defaults.

4.1.1 Events Constituting Default. A party hereunder shall be deemed to be in default under this Agreement if such party breaches any obligation required to be performed by it hereunder within any time period required for such performance and such breach or default continues for a period of thirty (30) days after written notice thereof from the party not in default hereunder; provided that if the nature of the default is such that it cannot reasonably be remedied within the thirty-day period, no default shall be deemed to exist if the cure is commenced within thirty (30) days and thereafter diligently pursued to completion within ninety (90) days.

4.1.2 Additional Developer Defaults. In addition to the foregoing, it shall be a default hereunder if: (a) Honeywell fails to perform or otherwise comply with any term, condition or covenant of the operations agreement with the City of Phoenix or any other agreement to which Honeywell is a party pertaining to the FTZ; (b) there is a breach of any warranty or representation made by Honeywell herein or in any document executed by it in connection herewith or with the establishment of the FTZ; (c) if this Agreement or any other document executed by Honeywell in connection with the FTZ shall at any time after its execution and delivery and for any reason cease to be in full force and effect or shall be declared null and void, or the validity or enforceability thereof shall be contested by Honeywell, or Honeywell shall fail to perform, or deny it has, any obligation thereunder.

4.2 Dispute Resolution. If there is a dispute hereunder that the parties cannot resolve between themselves, the parties agree that there shall be a forty-five (45) day moratorium on litigation during which time the parties agree to attempt to settle the dispute by nonbinding mediation before the commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The mediator selected shall have at least five (5) years experience in mediating or arbitrating disputes relating to commercial property development. The costs of any such mediation shall be divided equally between City and Developer or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the parties and any party shall be free to initiate litigation upon the conclusion of mediation.

4.3 Developer's Remedies. If City is in default under this Agreement and fails to cure any such default, then, in that event, in addition to all other legal and equitable remedies which the Developer may have, the Developer may terminate this Agreement by written notice delivered to City. In no event shall City's liability to Developer for any breach by City of this Agreement exceed the amount of Developer's actual damages, nor shall City be liable for lost profits, indirect, or consequential damages.

4.4 City's Remedies. If Developer is in default under this Agreement, and Developer thereafter fails to cure any such default, then the City shall have the right to terminate this Agreement immediately upon written notice to Developer. In no event shall Developer's liability to City for any breach by Developer of this Agreement exceed the amount of City's actual damages, nor shall Developer be liable for lost profits, indirect, or consequential damages.

4.5 No Personal Liability. No current or former member, official or employee of City or Developer shall be personally liable (a) in the event of any default or breach by City or Developer, as applicable, (b) for any amount which may become due to the nonbreaching party or its successor or assign, or (c) pursuant to any obligation of City or Developer, as the applicable, under the terms of this Agreement.

4.6 Liability and Indemnification. Developer shall indemnify, protect, defend and hold harmless City, its Council members, officers, employees, and agents, for, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and cleanup actions of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of Developer's breach of this Agreement or Developer's breach of a third party agreement as a result of entering into or performing its obligations hereunder.

5. General Provisions.

5.1 Notices. All notices required or permitted to be given hereunder shall be in writing and may be given in person or by United States mail or by courier. Any notice directed to a party shall become effective upon the earliest of the following: (a) actual receipt by that party; (b) hand delivery to such party at its designated notice address; (c) one (1) business day after deposit for delivery with a nationally-recognized overnight courier; (d) telephone facsimile with receipt confirmed; or (e) if given by certified or registered United States mail, forty-eight (48) hours after deposit with the United States Postal Service, postage prepaid, addressed to that party at its designated address. The designated address of a party shall be the address of that party shown below or such other address as that party, from time to time, may specify by notice to the other party:

TO CITY:

City Manager
City of Tempe
31 East Fifth Street
Tempe, Arizona 85281

With a copy to:

Tempe City Attorney's Office
21 E. Sixth Street, Suite 201
Tempe, Arizona 85281
Attention: City Attorney

TO Developer:

HONEYWELL INTERNATIONAL, INC.
Karyn A. Klos
Honeywell Aerospace
Director Import Compliance
13350 US Highway 19 N.
MS 274-2
Clearwater, FL 33764

Either party hereto shall have the right to change its designated notice address by providing to the other party written notice of such change in the manner described above.

5.2 Successors and Assigns; Restrictions on Assignment by Developer.

This Agreement shall inure to the benefit of and be binding upon the permitted successors and assigns of the parties hereto. Notwithstanding anything contained in the foregoing to the contrary, unless otherwise approved by City, Honeywell may not assign its rights, duties and obligations under this Agreement without the prior written consent of City, subject to such reasonable restrictions as City may impose.

5.3 Captions. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms or provisions hereof.

5.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement has been made and entered into in Maricopa County, Arizona.

5.5 Waiver. No waiver by either party of any breach of any of the terms, covenants or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant or condition herein contained.

5.6 Attorneys' Fees. In the event of any actual litigation between the parties in connection with this Agreement, the party prevailing in such action shall be entitled to recover from the other party all of its costs and fees, including reasonable attorneys' fees, which shall be determined by the court and not by the jury.

5.7 Severability. In the event that any phrase, clause, sentence, paragraph, section, article or other portion of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

5.8 Schedules and Exhibits. All schedules and exhibits attached hereto are incorporated herein by this reference as if fully set forth herein.

5.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and

contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

5.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

5.11 Recordation. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona within ten (10) days after its execution by City.

5.12 No Partnership; Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between Developer and the City. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

5.13 Authority. Each of the parties hereto represents and warrants to the other that the individual executing this Agreement on behalf of the respective parties are authorized and empowered to bind the party on whose behalf such individual is signing and that this Agreement shall be binding upon such parties.

5.14 Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to cancellation pursuant to A.R.S. Section 38-511.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement as of the day and year first above written.

WITNESSETH:

CITY OF TEMPE,
an Arizona municipal corporation

Brigitta M. Kuiper, City Clerk

By _____
Mark W. Mitchell, Mayor

Approved as to form:

Andrew B. Ching, City Attorney

STATE OF ARIZONA)
) ss
County of Maricopa)

On this ____ day of February, 2013 before me, the undersigned officer, personally appeared Mark W. Mitchell, who acknowledged himself to be Mayor of the City of Tempe, an Arizona Municipal corporation, and he, in such capacity, being authorized so to do, executed the forgoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Notary Seal:

HONEYWELL INTERNATIONAL, INC.

By: _____
Its: _____

State of Arizona)
)
County of _____)

On this _____ day of _____, 20____, before me personally appeared _____, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he or she signed the above/attached document.

Notary Public

Notary Seal:

Exhibit A
“Site”

Lot 2 of Warner Crossing Second Addition, a subdivision recorded in Book 536 of Maps, page 36 in the Official Records of Maricopa County.